United Nations A/C.3/65/L.26

General Assembly

Distr.: Limited
20 October 2010

Original: English

Sixty-fifth session
Third Committee
Agenda item 68 (a)
Promotion and protection of human rights: implementation of human rights instruments

Argentina, Austria, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Micronesia (Federated States of), Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Uruguay and Zambia: draft resolution

Torture and other cruel, inhuman or degrading treatment or punishment

The General Assembly,

Reaffirming that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance or any other public emergency, that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments, and that legal and procedural safeguards against such acts must not be subject to measures that would circumvent this right,

Recalling also that the prohibition of torture is a peremptory norm of international law and that international, regional and domestic courts have held the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law,

Recalling further the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Please recycle

Punishment,[1] without prejudice to any international instrument or national legislation which contains or may contain provisions of wider application,

Emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture contained in article 1 of the Convention,

Noting that under the Geneva Conventions of 1949,[2] torture and inhuman treatment are a grave breach and that under the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the Rome Statute of the International Criminal Court,[3] acts of torture can constitute crimes against humanity and, when committed in a situation of armed conflict, constitute war crimes,

Emphasizing that the entry into force as soon as possible of the International Convention for the Protection of All Persons from Enforced Disappearance[4] and its implementation will make a significant contribution to the prevention and prohibition of torture, including by prohibiting secret places of detention, and encouraging all States that have not done so to consider signing, ratifying or acceding to the Convention,

Commending the persistent efforts of civil society organizations, including non-governmental organizations, national human rights institutions and the considerable network of centres for the rehabilitation of victims of torture, to prevent and combat torture and to alleviate the suffering of victims of torture,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment, stresses that all acts of torture must be made offences under domestic criminal law, and encourages States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

3. *Welcomes* the establishment of national preventive mechanisms to prevent torture and other cruel, inhuman or degrading treatment or punishment,

---

[1] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[2] Ibid., vol. 75, Nos. 970-973.

[3] Ibid., vol. 2187, No. 38544.

[4] Resolution 61/177, annex.

encourages all States that have not yet done so to establish such mechanisms, and calls upon States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[5] to fulfil their obligation to designate or establish truly independent and effective national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

4. *Emphasizes* the importance of States cooperating with the relevant treaty bodies and mechanisms, including the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment and ensuring proper follow-up to their recommendations and conclusions;

5. *Condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security, during internal political instability or any other public emergency, or through judicial decisions;

6. *Stresses* that an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there is reasonable ground to believe that such an act has been committed, and that those who encourage, order, tolerate or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed;

7. *Takes note* in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)[6] as a useful tool in efforts to prevent and combat torture and of the updated set of principles for the protection of human rights through action to combat impunity;[7]

8. *Calls upon* all States to implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, particularly in places of detention and other places where persons are deprived of their liberty, including education and training of personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

9. *Urges* States to ensure that no authority or official orders, applies, permits or tolerates any sanction against any person or organization for having communicated to any national or international monitoring or preventive body or to their delegates any information regarding allegations of torture or other cruel, inhuman or degrading treatment or punishment, and that States do not in any way prejudice a person or organization for communicating such information;

---

[5] Resolution 57/199, annex.

[6] Resolution 55/89, annex.

[7] See E/CN.4/2005/102/Add.1.

10. *Calls upon* all States to adopt a gender-sensitive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, paying special attention to gender-based violence;

11. *Also calls upon* States to ensure that the rights of persons with disabilities, bearing in mind the Convention on the Rights of Persons with Disabilities,[8] are fully integrated into torture prevention and protection, and welcomes the efforts of the Special Rapporteur in this regard;

12. *Encourages* all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty, and to ensure that persons charged with torture or other cruel, inhuman or degrading treatment or punishment have no involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty while such charges are pending;

13. *Emphasizes* that acts of torture in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes, that acts of torture can constitute crimes against humanity and that the perpetrators of all acts of torture must be prosecuted and punished;

14. *Strongly urges* States to ensure that no statement that is established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, and recognizes that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes a safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

15. *Stresses* that States must not punish personnel for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

16. *Urges* States not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

17. *Recalls* that, for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights;

18. *Calls upon* States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[1] to fulfil their obligation to submit for prosecution or extradite those alleged to have committed acts of torture,

[8] Resolution 61/106, annex I.

and encourages other States to do likewise, bearing in mind the need to fight impunity;

19. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other specialized rehabilitation, and urges States to establish, maintain, facilitate or support rehabilitation centres for victims of torture and to ensure the safety of their staff and patients;

20. *Recalls* its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

21. *Reminds* all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished;

22. *Emphasizes* that conditions of detention must respect the dignity and human rights of detainees, highlights the importance of reflecting on this in efforts to promote respect for and protection of the rights of detainees, and notes in this regard concerns about solitary confinement;

23. *Calls upon* all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment;

24. *Urges* all States that have not yet done so to become parties to the Convention as a matter of priority, and calls upon States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention;

25. *Urges* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20, and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 with a view to enhancing the effectiveness of the Committee against Torture as soon as possible;

26. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles and persons with disabilities when submitting reports to the Committee;

27. *Welcomes* the work of the Committee and its report submitted in accordance with article 24 of the Convention,[9] recommends that the Committee continue to include information on the follow-up by States to its recommendations, and supports the Committee in its intention to further improve the effectiveness of its working methods;

28. *Invites* the Chairs of the Committee and the Subcommittee to present oral reports on the work of the committees and to engage in an interactive dialogue with the General Assembly at its sixty-sixth session under the sub-item entitled "Implementation of human rights instruments";

29. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

30. *Welcomes* the interim report of the Special Rapporteur,[10] and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

31. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered, and on other official contacts;

32. *Calls upon* all States to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to fully and expeditiously respond to and follow up on his urgent appeals, to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

33. *Stresses* the need for the continued regular exchange of views among the Committee, the Subcommittee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with regional organizations and mechanisms, as appropriate, and civil society organizations, including non-governmental organizations, with a view to enhancing further their effectiveness and cooperation on issues relating to the prevention and eradication of torture, inter alia, by improving their coordination;

34. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, appeals to all States and

[9] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 44* (A/65/44).
[10] See A/65/273.

organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions, and encourages contributions to the Special Fund established by the Optional Protocol to help finance the implementation of the recommendations made by the Subcommittee as well as education programmes of the national preventive mechanisms;

35. *Requests* the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Funds and to include the Funds on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

36. *Also requests* the Secretary-General to submit to the Human Rights Council and to the General Assembly at its sixty-sixth session a report on the operations of the Funds;

37. *Further requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment, including in particular the Committee against Torture, the Subcommittee on Prevention of Torture and the Special Rapporteur on torture, commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture, in order to enable them to discharge their mandates in a comprehensive, sustained and effective manner and taking fully into account the specific nature of their assignments;

38. *Calls upon* all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and civil society organizations, including non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

39. *Decides* to consider at its sixty-sixth session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture and the Special Fund established by the Optional Protocol, the report of the Committee against Torture and the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.